

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Kershaw County

Grace Gilchrist Knie, Circuit Court Judge

RECEIVED

Sep 23 2022

S.C. SUPREME COURT

JAMES WAYNE MILLER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-000753

MOTION FOR APPOINTMENT OF OUTSIDE COUNSEL

Undersigned counsel respectfully moves this Court to appoint outside counsel to represent petitioner James Wayne Miller in his appeal from the denial of his application for post-conviction relief (PCR).

1. Petitioner was indicted for second degree criminal sexual conduct (CSC) with a minor and incest. On March 14-18, 2016, he proceeded to trial before the Honorable Tanya A. Gee, and a jury. Anna Good, now Anna Browder represented petitioner.
2. Petitioner was found guilty, and Judge Gee sentenced petitioner to consecutive terms of twenty years' imprisonment for second degree CSC with a minor and ten years' imprisonment for incest.

3. Petitioner filed a timely notice of appeal and, Susan B. Hackett, Appellate Defender, of the South Carolina Commission on Indigent Defense filed the final brief and the record on appeal. In the brief Ms. Hackett raised two issues:

1) [v]iolating [petitioner's] right to due process of law, the trial judge erred in denying [petitioner's] request for a continuance where "good cause" existed in light of his serious medical condition, which rendered him unable to assist counsel; and

2) [t]he trial court erred by permitting Dr. Allison Foster to testify as an expert in child abuse assessment where her testimony improperly bolstered the complaining witness's credibility and there was insufficient evidence of the reliability of the subject matter of her testimony.

The South Carolina Court of Appeals affirmed petitioner's convictions. *State v. Miller*, Op. No. 2018-UP-121 (S.C. Ct. App. filed March 21, 2018). On behalf of petitioner, Ms. Hackett petitioned for rehearing and the Court of Appeals denied rehearing on May 24, 2018. On behalf of petitioner, Ms. Hackett petitioned the South Carolina Supreme Court for a writ of certiorari on July 5, 2018. The Court denied certiorari on September 21, 2018, and the case was remitted back to the circuit court October 1, 2018.

4. Subsequently, petitioner filed an application for PCR. Petitioner's allegations included ineffective assistance of appellate counsel, Susan B. Hackett. An evidentiary hearing was held on April 1, 2022, before the Honorable Grace Gilchrist Knie. Ola Johnson represented petitioner. William Blich, assistant attorney general, represented the state. Ms. Hackett testified at the evidentiary hearing.

5. Judge Knie signed an order denying PCR on May 5, 2022. Since petitioner was indigent, the appeal came to the Office of Appellate Defense, and the undersigned was assigned the case.

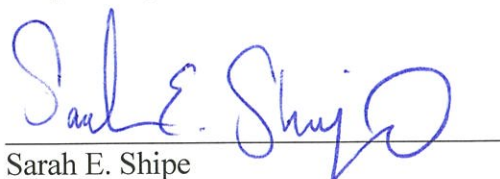
6. On September 1, 2022, for the first time, undersigned counsel spoke to Chief Appellate

Defender, Robert Dudek regarding this case. After the discussion undersigned counsel believes that because Ms. Hackett is undersigned counsel's colleague at South Carolina Commission on Indigent Defense, the Office of Appellate Defense, that, to avoid any appearance of conflict, undersigned counsel should move this Court to appoint outside counsel in this case.

7. Undersigned counsel leaves it to the Court's discretion whether outside counsel should be appointed to represent petitioner on appeal given the above. The undersigned discovered this potential conflict of interest or conflict of interest early and endeavored to prepare this motion before taking any extensions in petitioner's case.
8. Undersigned counsel can provide the Court additional specificity if desired by the Court prior to it ruling on this motion for the appointment of outside counsel.

WHEREFORE, undersigned counsel respectfully requests the appointment of outside counsel to represent petitioner in his appeal before this Court on the PCR court's order denying relief. Undersigned counsel also requests that this Court hold the timelines for filing the petition for writ of certiorari and appendix in abeyance pending a decision on this motion. If the motion for outside counsel is granted, undersigned counsel will immediately turn over her file and the compiled appendix to newly appointed counsel.

Respectfully submitted,



Sarah E. Shipe
Appellate Defender
Attorney for Appellant

This 23rd day of September, 2022.